

Overview of Rulemaking Process

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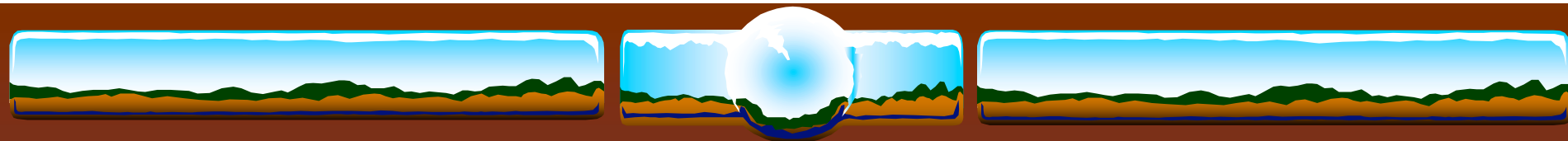
Idaho Department of Water Resources

Rulemaking Coordinator



Rules in general

- ❖ Idaho Water Resource Board (IWRB) has the responsibility of adopting minimum standards for well construction. I.C. § 42-238(12)
- ❖ The minimum standards are established by rule adopted under the rulemaking process.
- ❖ All rules promulgated within the authority conferred by law have the *force and effect of law* and should be regarded as such.
- ❖ Rulemaking is a serious undertaking and should be given the same respect as legislative statutes.



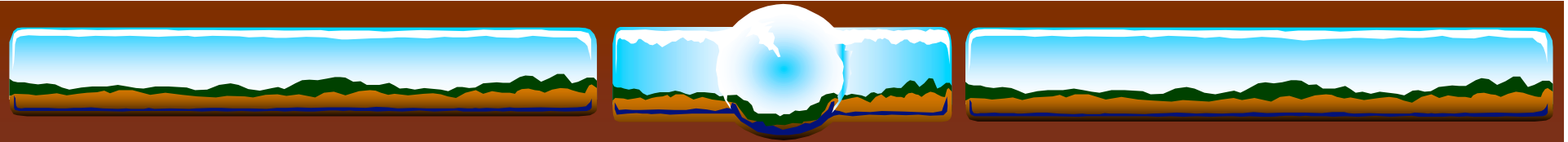
In Section 67-5201(19), Idaho Code, the “rule” is broadly defined, giving agencies latitude to decide what rules to include or exclude.



Section 67-5201(19)

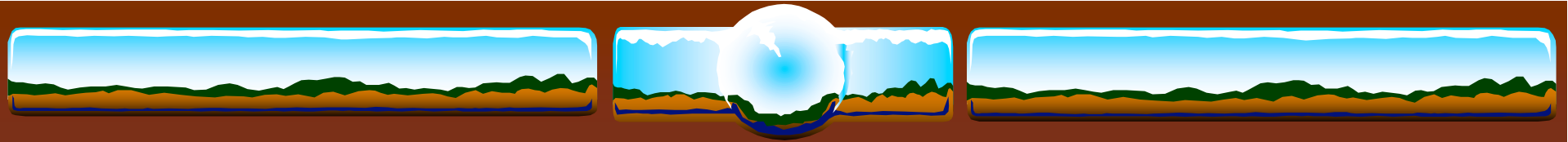
(19) “Rule” means the whole or part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, or prescribes:

(a) law or policy, or (b) the procedure or practice requirements of an agency. The term includes the amendment, repeal or suspension of an existing rule, but does not include (i) statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights or the public or procedures available to the public; or (ii) declaratory rulings issued pursuant to Section 67-5332, Idaho Code; or (iii) intra-agency memoranda; or (iv) any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule



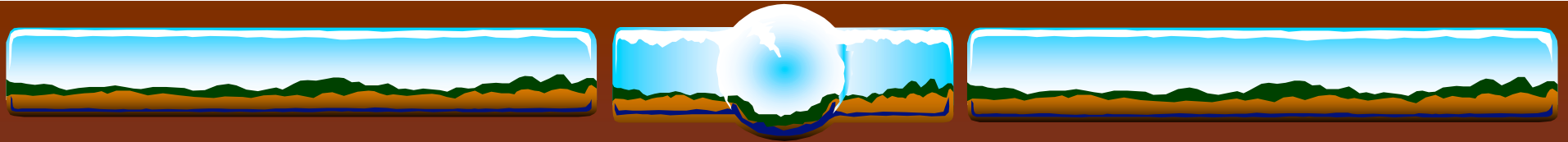
Promulgating rules

Rules can be promulgated through the formal rulemaking process, or an agency can choose to add an additional step of negotiating the rules prior to publishing.



Formal Rulemaking

- ❖ Agencies publish the text of the proposed rules Idaho Administrative Bulletin.
- ❖ Formal notice and comment period from the public on the proposed rules.
- ❖ The formal rulemaking process is very structured with exact timelines that may limit the opportunity for meaningful input by the stakeholder into the process.



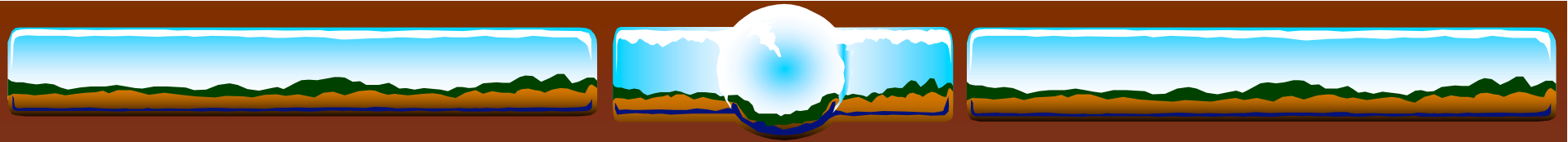
Negotiated Rulemaking

- ❖ Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the content of the rule.
- ❖ This process is generally **flexible** and **informal**.
- ❖ Meetings designed to “negotiate” the proposed changes or ideas with those who will be affected.
- ❖ These meetings should result in the formulation of a proposed or temporary rule that is ready to be published in the Bulletin.



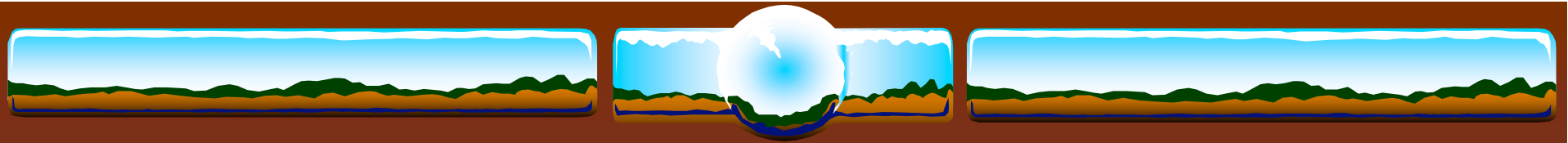
What are the Advantages to Negotiated Rulemaking?

- ❖ Save time and money because the discrepancies in the amendments or potential problems can be resolved before committing additional resources to the rulemaking.
- ❖ It can improve the substance of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons.
- ❖ It aids in arriving at a consensus on the content of the rule.
- ❖ Expedites formal rulemaking.



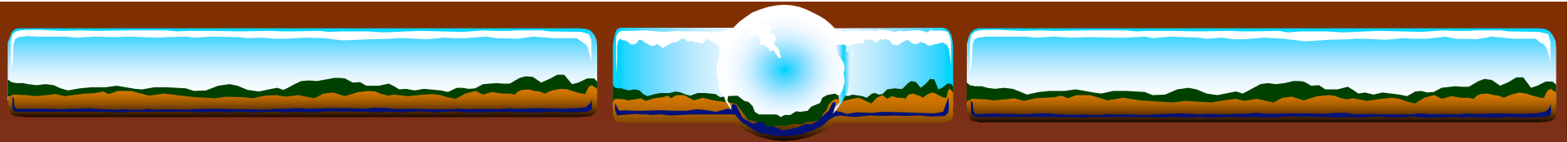
Negotiated Rulemaking

- ❖ IWRB has decided to include an additional step in the process by proceeding under the less formal negotiated rulemaking alternative, which explains why we are all here today.



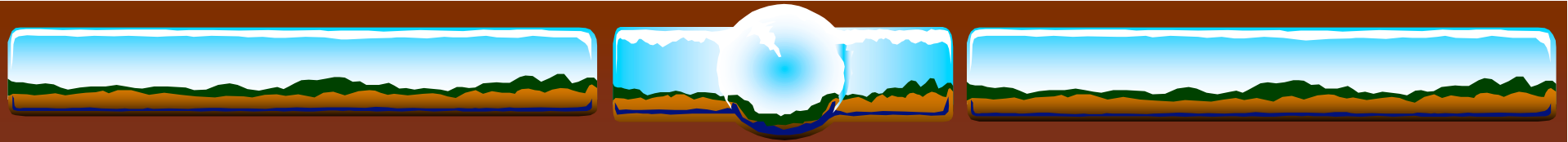
Negotiated Rulemaking

- ❖ The Board believed the less formal negotiated rulemaking process would be a better method to receive input from the regulated community and the public before the rule is published.
- ❖ Negotiated rulemaking if successful will allow the State, the regulated community and others to reach a consensus on what the rules before the rule are published and distributed for comment under the formal rule making process.



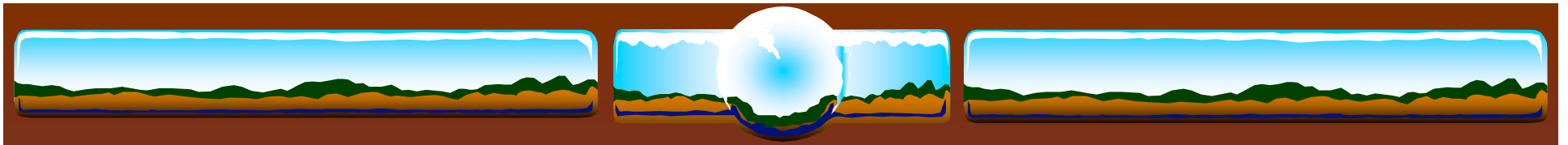
Proposed schedule

- ❖ Negotiated Rulemaking completed by November 2006
- ❖ Submitted to IWRB for approval in November 2006
- ❖ Department of Administration publishes rules in the bulletin - Winter of 2007
- ❖ Comment and hearing time
- ❖ Legislative committee review - Fall of 2007
- ❖ Submit for concurrent resolution - Legislative session 2008
- ❖ New Rules become effective July 1, 2008.



Rocky Mountain Environmental

- ❖ IWRB has contracted with Rocky Mountain Environmental to facilitate the negotiated rulemaking process.
- ❖ Encourage all the parties participating here today to make the most of this opportunity and provide meaningful and helpful input to enhance this effort.



Thank you